IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 18379 of 2004

Between:

Sri Machavathara Steel and Shipping and Engineers ,
No. 13,A/26, Chinna Kinaree Street, T. Kottampatti, Pollachi, Coimbatore, Tamilnadu, rep. by its Chief Executive V.Natarajan, aged 63, R/o. 13, A/26, Chinna Kuneru Street, T. Kottampatti Pollathi, Coimbatore, Tamil Nadu.

..... PETITIONER

AND

1 Hindustan Shipyard, Gandhigram, Visakhapatnam, rep. by its Chairman and Managing Director.
2 The Material Manager, Hindustan Ship Yard, Gandhigram, Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to Issue writ of mandamus or any other appropriate writ or direction declaring the action of the respondents in cancelling the contract vide telegraphic notice and letter dt. 21.9.2004 as illegal arbitrary and consequently direct the respondent to permit the petitioner to execute the work awarded as per letter dt. 23.8.2004 served on 20.9.2004.

For the Petitioner: MR.O.MANOHAR REDDY, Advocate

For the Respondents: MR.E.KALYANRAM

The Court at the admission stage made the following :

ORDER:

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It is averred by the petitioner that the first respondent on their failure to disposal of 954 tons of tubulars by public auction, the petitioner offered to purchase 800 MTs of pipes more than 18 years old at the rate of Rs.13,680/- per MT by its representation dt. 18-6-2004. On such representation being made by the petitioner, on negotiations, the respondents issued confirmation letter-cum-sale order dt. 23-8-2004, which was served on the petitioner on 20-9-2004, calling upon the petitioner to pay an advance of Rs.2.00 lakhs on or before 20-9-2004 and sale will become operative only on payment of the advance and will be effected on payment of differential custom duty on the entire lot of leftover tubulars after obtaining permission from Government of India for waiver of the differential custom duty, to which, the petitioner accepted and submitted a DD for Rs.2 lakhs towards EMD. In the meanwhile, the petitioner was served with the impugned telegram stating that offer made by the petitioner was cancelled due to administrative reasons and returned the DD submitted by the petitioner. Questioning the same, the present writ petition is filed contending that once contract is concluded, the respondents cannot cancel the sale agreement with regard to purchase of goods as indicated above.

It is well settled that a contract for sale of goods cannot be specifically enforced. However, the remedy for the petitioner, if any, is to file a suit for damages for the loss suffered by it on refusal of the contract.

I do not see any merit in the writ petition. The writ petition is accordingly dismissed. No costs.

8-10-2004

kmr

To

1 Hindustan Shipyard, Gandhigram, Visakhapatnam,
rep. by its Chairman and Managing Director.
2 The Material Manager, Hindustan Ship Yard,
Gandhigram, Visakhapatnam.

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